ENVS 60 Syllabus (Sept. 8, 2017 Version)
Environmental Law
Fall 2017
Class Location: Fairchild 213
Class Meeting time: 10 (10:10 – 11:15 am, M, W, F)
X-hour, 12:15 -1:05 pm, Th

Instructor: Ross Jones
Office: Fairchild 110A
Contact info: Email: ross.t.jones@dartmouth.edu; phone: 603-646-0261
Office hours: Thursday, 1:00-3:00pm – or by appointment

Textbooks & Other Readings

Textbook: Environmental Law and Policy (4th ed.) by James Salzman & Barton H. Thompson, Jr. This book provides an overview into the purposes of environmental law in general, as well as a survey of the contents and purpose of specific federal and international environmental laws. You should use it for background and as a reference for the topics that we will discuss.


Environmental Regulation: Law, Science, and Policy (7th edition), 2013. by Robert V. Percival, Christopher H. Schroeder, Alan S. Miller, and James P. Leape. This is a law school level case/text book for those who want a more in-depth exploration of the issues.

Additional Readings (articles, cases, statutes) will be posted on Canvas as needed. Additional course readings will be assigned throughout the quarter - some will be required readings and others will be optional. Copies of these materials will be posted on the class Canvas web site as needed. In addition, all statutes, legal cases, and law review articles that we will use are available for free download via the Dartmouth Network from Academic LexisNexis (Dartmouth Library website/eResources/Law).

Course Description
Environmental law and policy deals with the ways that human societies regulate the interaction of individuals, communities, businesses, and governments with environmental systems – both natural systems, such as forests, grazing lands, and marine ecosystems, and human-created systems such as the manufacturing industry, fossil fuel production and use, agriculture, and cities. While the focus of this course is environmental law, it is for anyone interested in learning about the foundations and practice of the Law in general, both nationally and internationally. Using the regulation of pollution, waste, land (private and public), and biodiversity as our models, we will cover how laws are made by courts (judicial opinions), legislatures (statutes), administrative agencies (regulations), and Presidents (executive orders). In addition, through assignments and class projects, we will cover the fundamentals of legal research, writing, and argument that are critical for the practice of law, as well as being necessary for anyone interested in the study of environmental law and policy. Most lectures will be available for online viewing, leaving more class time for discussions, mock legal proceedings, and other activities.
What is Environmental Law?
Environmental law aims to protect and enhance the environment, reduce the risk to human health from pollution, and achieve sustainable development of natural resources. The success of environmental law depends upon balancing the three components of sustainability: ecological, economic, and social/cultural. Today, the primary sources of this balancing act are federal, state, and local ordinances and their myriad regulations. However, these statutes and regulations overlay a common, judge-made, law that establishes a system of private and public property, a law of contracts that governs transactions, and a tort law that provides remedies for intentional and unintentional harms. In addition, there is a growing body of international environmental law with both similarities and differences to U.S. environmental law.

Course Objectives
The major objectives of this course are:
1. To survey today's major environmental laws,
2. Explore the history of environmental law and policy,
3. Determine how well environmental law balances science, economics, and social justice and,
4. To discuss how to improve environmental law to better deal with climate change, human population growth, energy needs, and biodiversity loss in the future.

Grades
Grades will be based on:
20% Take home Mid-term exam
20% Take home Final exam (cumulative)
20% Four mini-paper assignments (750 - 1,000 words, not counting citations, each)
15% Legal Brief (2,000 - 2,500 words)
15% Group project(s): in-class group projects (e.g., mock trials, presentations) with out-of-class preparation
10% Individual participation in class discussions and group projects

➢ The take-home exams will consist mostly of several hypothetical environmental issues/problems which you will analyze, using the material studied in the first part of the class (for mid-term exam) and entire class (final exam).
➢ The mini-papers will allow you to synthesize concepts and examples of various environmental laws, as well as provide you with additional feedback on your understanding of the material.
➢ The Legal brief is intended to encourage you to learn how to analyze and write like a lawyer/advocate – carefully constructing a legal argument through the persuasive application of relevant laws and policies.

Note: Instructions and examples of both kinds of briefs will be posted on Canvas. In addition, we will discuss both types of briefs in class.

➢ The group project(s) will range from in-class mock legal proceedings to end of term group presentation.

➢ Individual participation – Willingness to participate in and express one’s own informed opinions during in-class discussions will be valued over the ability to repeat what is in book. In addition, we will use our course’s Canvas discussion board to build upon and extend class discussion. Participation in both in-class and online forums will be counted in participation grade.
Students with disabilities. I encourage students with disabilities to make an appointment with me during the first week of the term to discuss appropriate accommodations that might be helpful. Also, contact Student Accessibility Services (Student.Accessibility.Services@Dartmouth.edu; 603-646-9900) and/or visit the Academic Skills Center in 224 Baker Library to register for support services.

Honor Principle. This course is conducted under the principles of the Dartmouth College Academic Honor Principle. See: http://www.dartmouth.edu/~uja/honor/

Note: an online version of Sources and Citation at Dartmouth College is available at: http://writing-speech.dartmouth.edu/learning/materials/sources-and-citations-dartmouth

Religious Observances
Some students may wish to take part in religious observances that occur during this academic term. If you have a religious observance that conflicts with your participation in the course, please meet with me before the end of the second week of the term to discuss appropriate accommodations.

X-hour. We will use X-hours for make-up classes if needed to remain on schedule. Additional X-hours will be used for meeting with groups to discuss projects or for optional discussions/review sessions. All other X-hour periods will be used as additional office hours.
CLASS SCHEDULE (09/10/2017 Version - Subject to Change)

Topic, Readings, Online Lectures, & Class Discussions/Projects
(Notes: 1. All readings are required unless otherwise noted, 2. Additional and/or Replacement Readings will be added through the term, announced in class, and added to course’s Canvas site; 3. Page numbers for Environmental Law and Policy textbook are for 4th edition; 4. Video lectures – via Canvas site)

Introduction
The purpose of the first five classes will be to explore: 1) the reasons for environmental laws, 2) the history and foundations of environmental laws, and 3) the tools/approaches of environmental laws.

M 9/11 Overview of course/Why do we have environmental law? What should be the goals of environmental law?

Environmental Law in the News

Changes to Pollution and Climate Change Law in 2017
Examples:

2. PBS Newshour story on the Trump administration’s campaign to dismantle the Obama’s administration’s climate change agenda: http://www.pbs.org/newshour/bb/trump-launches-aggressive-campaign-dismantle-obama-climate-agenda/


4. State-based approaches for dealing with Climate Change - the California example:

5. An article about how pressure from states can impact federal environmental policy:

Biodiversity conservation and the Law in 2017
Examples:
1. NPR radio story and article about the Trump administration’s plan to revise the conservation plan for the Western Sage Grouse: http://www.npr.org/sections/thetwo-way/2017/08/07/542118338/trump-administration-revises-conservation-plan-for-western-sage-grouse

2. A New York Times article on recent decision to de-list the Yellowstone grizzly bear and the opposition to the decision from conservation groups and Native Americans:

Background Reading: Law & Ecology, Chapter 1 (PDF on Canvas – useful overview for much of the course).
Sources of environmental law – history

Reading:
1. Environmental Law and Policy, Chapter 1
2. Law & Ecology, Chapter 2 (PDF on Canvas)
3. Vermont Law School – Climate Change in the Courts (a short summary of the current state of how courts are dealing with climate change litigation)

Video Lecture: Common Law Foundations (Canvas)

There is a link to the audio for the oral argument on this page. This case is a relatively recent judicial opinion that deals with the public nuisance law on a large scale (the opposite of Aldred's case that is discussed in the video lecture) Be sure to listen to Barbara Underwood's oral argument which begins at 35:50 minutes. Entire argument = 1 hour 16 minutes.

Optional Readings: (Common Law Historical Cases) - I discuss these cases in the video lecture. They provide a nice snapshot of the common law approach to environmental law from 1610 (Aldred's case) to 1970 (Spur Industries). I will add more cases to the Canvas site if/when we discuss them: Aldred's Case, St. Helens Smelting, Georgia v. Tennessee Copper, Missouri v. Illinois, Spur Industries.

Sources of environmental law – history continued & types of laws

Reading:
1. Law & Ecology, Chapter 3 (PDF on Canvas)
2. Environmental Law and Policy, Chapter 2

Video Lecture: Introduction to Environmental Law – part 1 (history)

Administrative & Regulatory Law

Reading:
1. Environmental Law and Policy, Chapter 3
2. Environmental Law and Policy, Chapter 4 (useful reference material for all of course)

Video Lecture: Introduction to Environmental Law – part 2 (administrative agencies)

Mini-paper #1: Common Law versus Regulatory approaches (Due Friday 9/22)

Environmental Assessment & NEPA – an Introduction

Reading:
1. (Textbook) Environmental Law and Policy, Chapter 12;
2. (Case) Calvert Cliffs Coordinating Committee v. United States Atomic Energy Commission (Canvas);
3. Additional Reading Richard Lazarus, The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and a Peek Behind the Curtains, 100 Geo. L.J. 1507 (2012) – Read pages 1507-1513; 1535-1565; 1585-1586 (Canvas)

Video Lecture: Introduction to NEPA
**Pollution law**

Many of the most well known environmental laws focus on regulating pollution in general and pollution within a specific media (e.g., air or water) in particular. In this section we will learn the basics of the laws dealing with the regulation of air and water pollution, as well as the primary motivation (e.g., human health) for the creation of these laws.

### Air Pollution

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<tr>
<td>9/22</td>
<td>Air Pollution - Part 1: Approaches to regulating air pollution</td>
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Readings:
2. Additional Reading EPA-Clean Air Act – Information *(Canvas)*
Video Lecture: Introduction to the Clean Air Act
**Mini-paper #1 Due**  

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<td>9/25</td>
<td>Air Pollution - Part 2: The Clean Air Act – Key Mechanisms in detail</td>
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Readings:
1. (Case) *Lead Industries Association v. EPA* *(Canvas)*
2. (Statute): Selected sections from Clean Air Act *(Canvas)*
The file "Clean Air Act - Selected Sections part 1’ contains excerpts from four sections from the Clean Air Act:
1. 7401 - Congressional findings and declaration of purpose
2. 7408 - Air quality criteria and control techniques (also referred to as section 108)
3. 7409 - National primary and secondary ambient air quality standards (section 109)
4. 7410 - State implementation plans (section 110)
You should skim the file to understand how the sections are structured, the topics covered in each section, and the level of detail used.  

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<td>9/27</td>
<td>Air Pollution - Part 3: Post 1990 (Acid Rain, Ozone, and Climate Change)</td>
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Readings:
1. (Case): *Alliance for Clean Coal v. Bayh* *(Canvas)*
2. (Statute): Clean Air Act – Acid Rain Sections *(Canvas)*
3. (Article): Costs-Benefits of CAA and Acid Rain Program, 2005 *(Canvas)*

### Water Pollution

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<td>9/29</td>
<td>Water Pollution - Part 1: Types of pollutants, sources, and approaches</td>
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Readings:
1. (Textbook) *Environmental Law and Policy*, Chapter 7
2. Additional Reading TBA
Video Lecture: The Regulation of Water Resources  

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<td>10/2</td>
<td>Water Pollution – Part 2: Clean Water Act – Key mechanisms and comparisons with CAA</td>
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Readings:
1. (Statute) Selected sections from Clean Water Act
**Mini-paper #2: State-based approaches for regulating air versus water pollution**
Regulating Risk

Our modern industrial society is marked by an ability to produce a large number of products and a copious amount of food. However, with this production come negative side effects, including the production of large amounts of waste and toxic substances. In this section we will learn about how environmental law deals with risk management; particularly as it relates to the regulation of toxic materials.

Regulating Toxic Substances

1. (Textbook) Environmental Law and Policy, Chapter 8 & Chapter 9 (pp. 231-247)
3. Video Lecture: Risk, Toxic Substances, & Waste Management (Parts 1 & 2)

Mini-paper #2 Due

Waste Management & CERCLA

1. Reading (textbook): Environmental Law and Policy, Chapter 9 (pp. 247 – 264)
3. Video Lecture: Risk, Toxic Substances, & Waste Management (Part 3)

**Mid-term Exam distributed (via email & Canvas) on Monday, October 9 by 12:00pm and due by Noon on Thursday, October 13 - My preference is for you to email it to me as an attachment (MS Word, Apple Pages, or PDF) Or submit it to the Canvas site. However, if you prefer, you can turn a hard copy into the ENVS office (Steele 113).

Conserving and Protecting Natural Resources

Some of the most contentious environmental disputes have involved deciding what are the individual and social responsibilities towards protecting other species and natural ecosystems. We will spend the next several classes learning about the basic components of major environmental laws dealing with the protection of natural resources and species – on private and public property.

Regulating Private Lands - Land Use Regulation & Regulatory Takings

1. Environmental Law and Policy: pp. 79-84
2. Reading (case): Lucas v. South Carolina Coastal Council (Canvas)
3. Reading (journal article): History of Taking (Canvas)
4. Powerpoint slides on Regulatory Taking (Canvas)
Regulating Public & Common Property – Natural Resource Management

M 10/16  Regulating & Managing Natural Resources – Public Lands, Wetlands, and Fisheries
Readings:
1. (Textbook): *Environmental Law and Policy*, Chapter 10 (pp. 271 – 287)
2. (Book Excerpts) *Law and Ecology*, Chapter 6 (pp. 203 – 215) & Chapter 9 (pp. 295 – 313) *(PDFs on Canvas)*
3. Additional Reading TBA
Video Lecture: Natural Resources Management – part 1 (Public Lands & Wetlands)

Mini-paper #3: Public versus Private land regulation

Regulating Public & Common Property – Natural Resource Management (continued)

W 10/18  Regulating & Managing Natural Resources – applying the laws
Readings:
1. (Statutes & Regulations): Selected sections from the National Forest Management Act of 1976 and the Magnuson-Stevens Act of 1976 & Sustainable Fishery Act of 1996; along with representative regulations *(Canvas)*
Video Lecture: Natural Resource Management – Forests & Fisheries

F 10/20  Case Study - Ecological Sustainability and Public Forest Management
Readings:
1. (Case): Sierra Club v. Marita (7th Circuit opinion) *(Canvas)*
3. Supplemental Readings (cases): Sierra Club v. Marita (District Court opinions) *(Canvas)*
Mini-paper #3 Due

M 10/23  Agriculture & Environmental Law
Reading:
2. Farm Waste & Water Contamination – NY Times article *(Canvas)*

Protecting Biodiversity – the Endangered Species Act (ESA)

W 10/25  The ESA – Statutory & Regulatory Mechanisms
Readings:
1. (Textbook): *Environmental Law and Policy*, Chapter 10 (pp. 287-309);
2. *Law & Ecology*, Chapter 6 (pp. 193 – 202) & Chapter 9 (pp. 286 – 295) – *(PDFs on Canvas)*
3. (Statute): excerpts from the ESA *(Canvas)*
Video Lecture: Introduction to the Endangered Species Act

F 10/27  The ESA – (the cases & the future)
Readings:
1. (Case): Babbitt v. Sweet Home *(Canvas)*
Integrating Environmental Laws

Starting in the late 1970s, concern about high profile environmental damage to many natural and human dominated ecosystems (through human economic activities) led to many environmental laws (both old and new) taking on a more placed-based concern; in which ways were found to link normally separate environmental laws or specific environmental laws were written to regulate human actions in specific types of environments. Many of these examples involve the integration of pollution and natural resource laws, as well as laws at different levels of government – e.g., state and federal – and fall under the relatively new term, ecosystem management.

International Environmental Law – An Introduction

From climate change to the global biodiversity crisis, many major environmental problems today are global in scope. For the next three classes we will compare and contrast the structure and content of some major international environmental laws. We will focus on how international laws are developed and how they are similar (and different) to American environmental laws.

Mini-paper #4 Due
W 11/8 Energy and Environmental Law
Reading (textbook): *Environmental Law and Policy*, Chapter 11

**Group Presentations** - Material from presentations will be covered in final exam. Each presentation will be approximately 30 minutes per group
F 11/10 Group presentations
M 11/13 Group presentations

**Note: Legal Brief due on Monday, November 13**

*Final Exam will be distributed (via email & Canvas) at beginning of Final Exam period (Friday, Nov. 17) and will be due by 3:00pm of final day (Wednesday, Nov. 22) of Final Exam period.*